

REMARKS

This is responsive to the non-final Office Action mailed November 27, 2007. Accordingly, it is accompanied by a petition to extend the time for response by two (2) months, together with the required fee.

Minor amendments to claims 1 and 6 are made for the purpose of improving their consistency.

The Examiner states that the only difference between the ice cube tray of Spreen and claim 1 is a filling indicia. Basically, Applicant agrees.¹ However, the question is whether that difference would have been obvious.

The Examiner states further that, if Spreen were modified according to the teachings of the present application, it would function according to the claimed invention. Certainly that is true, but the same question remains, whether modifying Spreen to make up the difference would have been obvious.

Applicant answered the question, by showing (as the Examiner notes) that (1) there was no generally recognized need for a user of an ice-cube tray to fill the tray to precise levels, and (2) the only prior art of record in which such a need is recognized is in the context of commercial manufacturing, a context in which filling indicia would not be useful—because as is well known, in any such manufacturing environment, automated machinery is used to fill the containers and filling indicia would be useful only if the container is filled by sight.²

¹ With the clarification that filling indicia are provided in the present invention in more than one compartment of the tray.

² It is assumed to be unnecessary to submit a Declaration in support of this factual assertion because it is believed to be well known as a result of everyday, ordinary experience, and the Examiner has not indicated disagreement.

Applicant respectfully submits that this showing provides good reason to conclude that the invention was not obvious, and the Examiner has provided no rebuttal arguments or evidence that contradicts it.

However, there is a more basic and intuitive reason for concluding that the invention was not obvious, which is believed to be worth repeating.

Obviousness requires motivation. Nobody will make something that they are not motivated to make. Here, all the evidence is that Spreen has never been modified according to Applicant's invention. If we assume there was motivation, the obvious question is, why not?

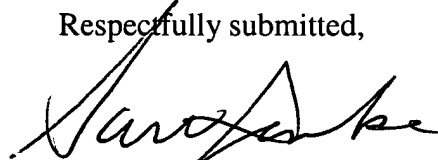
Logically, there would have to have been some barrier preventing people from making the modification, despite their motivation. So what could that barrier have been? It is not technically challenging to add marks to an ice-cube tray, so it could not have been a lack of skill. At least in the last few decades during which ice-cube trays have been mass-produced in plastic molded form, adding filling indicia would have added negligible cost. So it could not have been a lack of commercial feasibility. It certainly could not have been a lack of time, because ice-cube trays have been well known and used for many decades, and Spreen has been prior art for over 75 years. There was more than enough time to make the modification if it had been recognized as being desirable as the Examiner alleges.

The obvious answer is the correct one: there were no barriers to providing ice-cube trays with filling indicia, so the fact that they were not demonstrates that there was no motivation.

Filling indicia are provided in measuring cups because measuring cups are used for measuring, but filling indicia have not been provided in ice-cube trays because ice-cube trays have not been used for measuring. Applicant had a unique recognition, to utilize containers having

multiple compartments as claimed for measuring and storing rations of food. No one else had this recognition, and there is no evidence that it was obvious. Applicant respectfully submits, therefore, that the claims are in condition for allowance and should be allowed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Garth Janke', written over the printed name.

Garth Janke
Reg. No. 40,662
(503) 228-1841